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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,519	11/14/2003	Robert E. Platt	1522-K-CONT	9978
27542	7590	09/15/2004	EXAMINER	
SAND & SEBOLT AEGIS TOWER, SUITE 1100 4940 MUNSON STREET, NW CANTON, OH 44718-3615			MACARTHUR, VICTOR L	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

km

# Office Action Summary

Application No. 10/713,519		Applicant(s) PLATT, ROBERT E.	
Examiner Victor MacArthur		Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ooi U.S. Patent 5026028.

Claim 1. Ooi discloses (fig.1) a rail clip for attaching a rail to a post, the rail clip comprising: a bracket (2) adapted to be mounted on the post (1); a rail connector (20), a connector mechanism (4, 5, 12, 16, 22, 26) for securing the rail connector and bracket together, the connector mechanism comprising: a first mechanism (4, 5, 22, 26) that allows the positions of the rail connector and bracket to be arcuately adjusted relative to each other but does not allow axial or lateral withdrawal of the rail connector from the bracket, and a second mechanism (12, 16) that locks the rail connector and bracket together when the rail connector and bracket have been arcuately adjusted and are in a desired orientation relative to each other (as seen in fig.2) and so that substantially no additional (i.e. in addition to rotation) relative movement can occur between the rail connector and the bracket (within an assembled fence); and a rail receiving receptacle (portion of 20 receiving 10) formed on the rail connector, the rail receiving receptacle receiving an end of the rail (10) therein; whereby adjustment of the rail connector relative to the bracket varies the angle of the rail receiving receptacle relative to the bracket.

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Claim 2. Ooi discloses that the bracket includes an arcuate outer surface (4 is arcuate at is boundary) and the rail connector slidably engages (for rotational sliding) the outer surface of the bracket and wherein the position of the rail connector is adjusted by sliding the rail connector along the outer surface of the bracket.

Claim 3. Ooi discloses that the first mechanism comprises: a first groove (24, as best seen in fig.5) formed in one of the rail connector and the bracket: and a boss (4) formed in the other of the rail connector and the bracket, whereby the boss and groove interlock with each other and allow sliding arcuate movement between the rail connector and bracket, while substantially preventing the axial or lateral separation of the rail connector from the bracket.

Claim 4. Ooi discloses that the second mechanism comprises at least one fastener (16) that fixably connects the bracket and rail connector together thereby substantially preventing further relative movement between the bracket and the rail connector (in a fully assembled fence).

Claim 5. Ooi discloses that the rail connector includes a rear wall (25) that is complementary shaped (in that 25 is shaped to fit between 4) to the outer surface of the bracket wherein the rail- receiving receptacle extends outwardly from the rear wall.

Claim 6. Ooi discloses that the rear wall is concave in shape and projects partially into the rail-receiving receptacle.

Claim 7. Ooi discloses that the rail receiving receptacle has an upper wall (top wall of 20), a lower wall (lower walls of 20, as best seen in fig.4) and two side walls (22); and the side walls have an interior face, an exterior face and front (opposite 26) and back (26) edges, and the

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side walls extend a short distance beyond the rear wall thereby forming a lip (between 26 and 25) between the back edge and the rear wall (25).

Claim 8. Ooi discloses that the back edges (26) of the sidewalls are concave in shape.

Claim 9. Ooi discloses that the back edges of the sidewalls are adapted to be complementarily shaped (in that 22 is shaped to fit around 4) with the outer surface of the bracket.

Claim 10. Ooi discloses that the lip further includes a ridge (ridge portion of 26), the ridge running along the back edge of the sidewall.

Claim 11. Ooi discloses that the bracket defines a first groove (5) and the ridge of the rail connector interlocks (via 16) with the first groove so as to allow sliding engagement between the bracket and rail connector; the ridge and first groove comprising the first mechanism to secure the bracket and rail connector together.

Claim 12. Ooi discloses that the bracket has a rear surface (portion of 2 contacting 1) and the rear surface is substantially flat and is adapted to abut a substantially flat surface on the post.

### ***Response to Arguments***

Applicant's arguments with regard to the claim rejections have been fully considered but they are not persuasive.

The applicant argues that Ooi does not disclose limitations (e.g. rail connector, bracket, second mechanism, etc.) in accordance with certain special definitions. This is not persuasive since the applicant's Specification does not set forth any clear and deliberate special definitions. The claims must be interpreted as broadly as their terms reasonably allow. This means that the

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words of the claim must be given their plain meaning unless applicant has provided a clear and deliberate definition in the Specification. Exemplification is not an “explicit definition” and even “explicit definitions” can be subject to varying interpretations. *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Teleflex Inc. v. Ficosa North America Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP 2111,01. Furthermore, applicant is reminded that where there is physical identity between the subject matter of the claim and the prior art, the label given to the claimed subject matter does not distinguish the invention over the prior art. *In re Pearson*, 494 F. 2d 1399, 1403, 181 USPQ 641, 644 (CCPA 1974); *In re Lemin*, 326 F. 2d 437, 140 USPQ 273 (CCPA 1964).

The applicant argues that Ooi does not explicitly recite the applicant’s claimed functional limitations. This is not persuasive since the structure of Ooi as depicted in the drawings performs the applicant’s claimed functional limitations within the **broadest** reasonable interpretation of the claim language (emphasis added). Furthermore, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed (*i.e.* a functional limitation) is given only limited patentable weight since it does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963).

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



VLM

September 13, 2004



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600